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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

HENRY S. REUSS, Petitioner

v.

JOHN J. BALLES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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AUTHORITIES

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Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26 (1976)---------- 3

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1. The Brief for the Respondents in Opposition throws into sharp relief the principal constitutional issue presented by this litigation, which is whether an invasion or impairment of a constitutionally protected interest can, in and of itself, be regarded as such an injury as to give rise to standing to sue. In support of their position that it cannot, respondents have developed a theory that no redress of such an injury can be sought unless the plaintiff can point to some consequential benefit, above and beyond the protection of his constitutional interests as such, which he will receive if the relief sought is granted.

In support of this theory, respondents have advanced an interpretation of *Palmore* and *Glidden* to the effect that the "benefit" which gave rise to standing in those cases was not the vindication of the right to litigate (whether for the first time or the *n*th time) before judges free of constitutional taint, but was instead the opportunity to *re*litigate the cases. (Brief, pp. 6, 7). Whether, *a priori*, this would in fact be a benefit is a professional judgment to be made upon an assessment of the defendant's risk of ultimately facing a more onerous injunction or a more severe sentence. There is not the slightest suggestion by this Court in either *Glidden* or *Palmore* that the result in either case was predicated upon the possibility of obtaining any such chimerical "benefit". To the contrary, the analysis of injury in those cases, while implicit rather than explicit, is perfectly straightforward: the injury claimed is a denial of the litigants' constitutionally protected interest in having the litigation conducted under Article III judges, and that is an injury which, if proven, would be redressed by a holding of this Court requiring that the litigation be conducted before judges appointed in accordance with the Constitution. As this Court observed in *Buckley*, 424 U.S. at 117, the issue of standing exists independently of whether the relief sought is prospective or retrospective. On respondents' relitigation "benefit" theory, prospective relief could never be obtained.

2. Respondents reach the foregoing result through what we respectfully submit is a serious misreading of *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976). The injury claimed in that case was reduced availability of subsidized medical care, a very specialized form of economic injury. The holding of the case is, we respectfully submit, that where an economic injury is claimed, the complaint must show on its face that if the relief sought is granted, the injury claimed will be redressed. With all respect, we submit that it is a serious error to read *Simon* as holding that no matter what kind of primary injury is claimed, a consequential economic or other similar loss must be demonstrated in order to confer standing to sue. Yet this is the interpretation presented by the respondents at the very outset of their argument (Brief, p. 4). If that interpretation were valid, then not only did *Simon* overrule *Glidden* and *Palmore*, it would call into question the judicial protections traditionally afforded to the most fundamental constitutional rights, and would call for judicial excursions into questions of causality never before deemed relevant. In short, the respondents' interpretation of *Simon* would validate the worst fears of the most vehement critics of that decision.

3. In the case at bar, the plaintiff cannot seek retrospective relief—that is, some administrative equivalent of relitigation—because the practicalities of the situation preclude it. No matter how much loss a

bondholder may suffer from a past decision of the FOMC, there is no way that such a decision can be retroactively reversed. This is because the implementation of such decisions commences immediately, and there is no way to restore the *status quo ante*. The petitioner is fully prepared to prove that, as a bondholder, he has suffered severe economic losses through past actions of the FOMC.[1] Such proof would seem to be admissible under the pleadings as bearing on the issue of whether the plaintiff has sufficient concrete interests at stake to

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1. Footnote 9 of the Respondents Brief (p. 9) reflects a misunderstanding of the petitioner's position. As a litigant, he is not concerned with the effect, as such, of the FOMC's decisions on the economy as a whole, but rather with the effect of such decisions *on him*, an effect which he maintains is radically different under the managed paper standard from what it would have been under the gold standard. On that issue, there remains a sharp conflict between the positions of the petitioner and the respondents. Respondents continue to maintain that the FOMC's decisions are but one influence on the supply and value of money. In their history of the Federal Reserve System presented to the District Court as well as in their brief in the Court of Appeals, respondents ignored the shift from the gold standard to the paper standard. In this Court, they continue to urge that the FOMC's actions merely "affect" the money supply and "influence" interest rates (Brief, p. 9, n. 9). Petitioner has consistently maintained that the FOMC's power is not merely influential, but controlling. The procedural error of which the petitioner complains is the resolution of the issue of control against him without any opportunity to subject the unsupported contrary factual representations made by respondents' counsel to any kind of probative procedures whatsoever.

afford him standing to challenge the defendants' appointments. A recognition that practical considerations preclude retrospective relief strengthens rather than weakens the case for prospective relief.

CONCLUSION

If the respondents' interpretations of *Simon*, *Glidden*, and *Palmore* had been offered by private counsel, they might be regarded as of little consequence. They were not, and they are not. The fact that the Solicitor General of the United States found it necessary to advance such interpretations of those cases in order to defend the judgment of the Court of Appeals in this case argues strongly for granting the writ.

Respectfully submitted,

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